

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL W. HUNTER,

Plaintiff,

vs.

ED SMITH,

Defendant.

CV 15-00036-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE TO DISMISS COMPLAINT

On April 22, 2015, Mr. Hunter filed a Motion to Proceed in Forma Pauperis (Doc. 1) and a pleading the Court construed as a proposed Complaint (Doc. 2). He filed a nearly incomprehensible document entitled Motion to Proceed (Doc. 4) on May 11, 2015. On May 12, 2015, the Court issued an Order, finding that Mr. Hunter's Motion to Proceed in Forma Pauperis was subject to denial for failure to submit an account statement and his Complaint failed to state a claim upon which relief may be granted. (Doc. 5.) Mr. Hunter was given additional time to submit a certified copy of his prison trust account statement and to file an amended complaint. (Doc. 5.)

Mr. Hunter did not respond to the Court's May 12, 2015 Order. Accordingly, the motion to proceed in forma pauperis should be denied for failure to submit an account statement as required by 28 U.S.C. § 1915(a)(2). This matter

should be dismissed for the reasons set forth in the Court's Order of May 12, 2015.

Based upon the foregoing, the Court issues the following:

RECOMMENDATIONS

1. Mr. Hunter's Motion to Proceed in Forma Pauperis (Doc. 1) should be **DENIED** for failure to submit an account statement as required by 28 U.S.C. § 1915(a)(2). The Court should decline to give Mr. Hunter an opportunity to pay the filing fee because the Complaint fails to state a claim for which relief can be granted and Mr. Hunter failed to file an amended complaint after being given an opportunity to do so. The Complaint (Doc. 2) should be **DISMISSED**.

2. The Clerk of Court should be directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Hunter may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

¹As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a) should not be filed until entry of the District Court's final judgment.

DATED this 22nd day of June, 2015.

/s/ John Johnston
John Johnston
United States Magistrate Judge